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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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FEB 20 2004

FILE:

Office: SAN DIEGO Date:

IN RE:

Obligor:
Bonded Alien

IMMIGRATION BOND:

Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, San Diego, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on December 7, 2001, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 25, 2003, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the custody of an officer of Immigration and Customs Enforcement (ICE) at 9:00 a.m. on September 2, 2003, at [REDACTED]. [REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On October 23, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts the order of removal is not final as the Board of Immigration Appeals (BIA) vacated its decision.

The record reflects that a removal hearing was held on January 6, 2003 and the alien was ordered removed from the United States. The alien appealed the immigration judge's decision to the BIA. On July 11, 2003, the BIA dismissed the appeal as moot. On August 11, 2003, the alien filed a motion to reconsider. On November 18, 2003, the BIA vacated its prior decision, dated July 11, 2003, and a new briefing is scheduled to be set.

A motion to reconsider filed before the BIA does not automatically stay the execution of a removal order. 8 C.F.R. § 1003.23(b)(1)(v). There is no evidence of record to indicate that the BIA stayed the bonded alien's removal during the pendency of the motion, or that the removal order was stayed on the date of the breach. Bond proceedings are separate and distinct from deportation proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the U.S. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;

(iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on July 25, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on September 2, 2003. The U.S. Postal Service track and confirm receipt indicates the obligor received notice to produce the bonded alien on July 30, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.